IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26-02-2002

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

CRL.R.C.No.840 of 1998 and Crl.M.P.No.5950 of 1998

1.R.Rajagopal @ R.R.Gopal
2. A.Kamaraj .. Petitioners.

Versus

V.Sathyamoorthy .. Respondent.

! For Petitioner: Mr.T.Sudanthiram
for T.Perumal

^ For Respondent: Mr.S.Shanmugavelayutham

Prayer: Revision against the order passed by the learned XIV Metropolitan Magistrate in M.P.No.4986 of 1998 in C.C.No.7914 of 1997 on 11.8 .98 and as stated therein.

: O R D E R

This revision has been filed against the orders passed by the XIV Metropolitan Magistrate in Crl.M.P.No.4986 of 1998 in C.C.No.7914 of 19 97 on its file, dismissing the application for dropping proceedings against the petitioners herein of offences under Section 500, 501, 502 and 153 I.P.C.

2. Before going into the objections raised by the petitioners, a brief narration of the facts as revealed by the complaint is necessary: The Complainant/Respondent Thiru.Sathiyamoorthy who is a Law Graduate and was an elected member of the Legislative Assembly in 1980 and 1991 belong to All India Anna Dravida Munetra Kazhagam (hereinafter referred to as `AIADMK')and was a Minister for commercial taxes during the period 1993 to 1996. In addition, he was also the Head Quarters Secretary of the AIADMK. He was also the District Secretary of the party for Ramanthapuram District. As such he was being a respected and honoured by every person in the party.

3. The first petitioner is the Printer, Publisher and Proprietor of Nakeeran publications, while the second petitioner is the Editor and

Administrative Editor of Nakkeeran Publications. The accused were responsible for publishing weekly magazine Nakeeran and the issue dated 30.9.97 among other news articles contained a publication which reads as follows in the Vernacular: (The following is in Tamil version)

@b$aypyjh rk;ge;jkh VjhtJ jfty; ,Uf;fh@
jiytnu ? Mt';f ,d;dKk; khwpty;iy/ Ml;rp ,d;dKk; mt';f ifapny ,Uf; fpwjh epidg;[[g[/ Ml;[rpapny ,Ue;jg;g nghyP!; Jiza[ld; mojo muh$f';fis bra;jh';f/ ,;g;g fl;rpf;fhu';f PKykhf mijr; bra;aj; Jzp";rpl;lh';f/@
@Vd;d tpc&ak;D tptukh brhy;Yg;gh@
@bjd;khtl;l';fspy; Vw;gl;l fytu';fshy; jp/K/f/ Ml;rp kPJ me;jg; gFjp kf;fSf;F bgUk; mjpUg;jp Vw;gl;lJ/ rkPg fhykhf m';nf fytu';fs; Fiw"; Rfpl;L tUJ/ Mdh N$ayypjht[f;F ,J gpof;ftpy;iy/ m';nf bjhlh;e;J rhjpf; fytuk; jP gw;wp vhpa[Zk;D btspg;gilahnt brhy;yp;fpfl;oUf;fh';f/ bjd; khtl;l';fspy; njnte;jpuFy ntshsh; rKjhahj;ijr; nrh;e;j kf;fpslk; bgUk; bry;thf;Fg; bgw;wpUf;Fk; lhf;lh; fpUc&;zrhkpia vg;goahtJ Jph;j; Jf; fl;olQWk;D nryk; khtl;l kh$p; ke;jphp Pkykh b$ayypjh ufrpakh Vw; ghL gz;zpapUf;fh';f/ ,jw;fhf gzKk; ifkhwpapUf;F/
@bfh:L:ukhd jpl;lkh ,Uf;nf@
@,e;j rjpj; jpl;lk; epiwntwpdhy; bj;d khtl;l;'fspy; Vw;glf; Toa fytuj;ij mlf;f uhQWtk; jhd; tuntz;oapUf;Fk;/ m;gog;gl;l NH;epiy cUthdhy; jp/K/f/ muRf;F kpfg; bghpa rl;l xH';F beUf;fo Vw;gLtnjhL jypj; kf; fspd; nfhgKk;. X;lLbkhj;jkh jp/K/f/ gf;fk; jpUk;gpLk; mg;go';fpwJjhd; b$ayypjhnthl jpl;lk;@
@bfhs;sp beUg;gpy; Fsph;fha epidf;Fk; ,e;j khjphp murpay; tpahjpfSf;F ey;y rpe;jidna tuhjh@

4. The Translation of the said publication would be as follows:
"Is there any news relating to Jeyalalitha?"
She has not changed yet. She is under the impression that she is still governing the State. While she was ruling the State, she indulged in hooliganisam with the help of the police, but now she has dared to do with her party men.
"Would you explain in detail?"
Because of the riots at the southern region of Tamilnadu, the people were dissatisfied with the DMK Party which was ruling then. But off late such riots were found to come down. But Jeyalalitha apparently did not like this and she had openly stated so to the effect that communal violence should erupt again and that Dr.Krishnasamy who belongs to the community of Devandra Kula Vellalar should be done away and that this plan has been mooted out to be done through the previous Minister, hailing from Salem District. In order to carry out the aforesaid design, money has also been paid.

"It appears to be a horrible plan?"
If this plan works out and the communal violence erupt, it can be put down only if the military steps-in. If such a situation has been created, the DMK Ministry will be put to difficulties and that it will earn the wrath of the Dalith people, hence Jeyalalitha has planed, as stated above.
"Will not better sense prevail over such politicians"

5. According to the complainant, the above said allegations are totally false and it suggests that some atrocities were committed during the previous regime with the help of the police. This is untrue and deliberately made with a mischievious intention to divide the Party Cadre. Further news item creates the impression that the General Secretary J.Jayalalitha was interested in the continuation of communal riots in the Southern Districts and for that purpose prepared to arrange and to support with finance through some Ex-Minister even to carry out the murder of Dr.Krishnaswamy. It further deliberately states that she has decided to commit various other criminal acts through her (AIADMK) partymen since she is out of power.

6. The complaint further deals as to how the said article has been viewed by the party men and the public and it will not be necessary for us to go into those details for the purpose of deciding this issue, since those are not the matters that has been agitated over here.

7. Though several points had been raised in the petition, the counsel for the accused confined his arguments only to the following two points.
a) The alleged defending portion of the report never reveals any direct or indirect imputation against the AIADMK as such, much less against the complainant. Therefore, he is not the competent person to file a complaint, in view of Section 199(1) Cr.P.C. The defamatory article would at best relate to Jayalalitha alone and hence she alone can file a complaint.
b) The said article though not accepting, but assuming for argument sake, appears to be a defamatory matter, it does not denote to a

particular determinate or identifiable body, which alone would enable one such person belonging to such a determinate body as a competent person to file a complaint.

8. At this juncture, before going into the points raised, it will not be out of place for me to incorporate the words of Supreme Court stated in the judgment reported in Sahib Singh Vs. State of Uttar Pradesh (AIR 1965 SC 1451)that the press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspaper should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided.

9. Now coming to the first point raised by the counsel namely that the defending article does not defame the complainant as such and if at all it has to be construed to be defamatory, it can at best be a defamation as far as Jayalalitha is concerned. Consequently the learned counsel is of the firm view that only Jayalalitha can alone file the complaint and not the complainant, who nodoubt happenned to be a Minister in the Cabinet, when her party was ruling the State.

10. In support of his contention, the learned counsel mainly

relied on the Provisions of Section 199 Cr.P.C, which reads as follows:
"No Court shall take cognizance of the offence furnished under Chapter XXI of I.P.C., except upon a complaint made by some persons aggrieved by the offence.
He would lay emphasis on the language found in Section 199 Cr.P.C to the effect that "except upon a complaint made by some person aggrieved by the offence". This according to the counsel would only mean that the person who is aggrieved alone can file the complaint. In the present case if at all somebody is being aggrieved, it is Jayalalitha and Consequently, Jayalalitha alone is competent to file.

11. The further contention of the counsel is that there can be an exception for a complaint to be made only in certain cases, where such a person is under the age of 18 years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not be compelled to appear in public, some other person may with the leave of the Court, make a complaint on his or her behalf.

12. In addition to the above said arguments, the learned counsel drew my attention to Paragraph 13 of the judgment reported in G. Narasimhan and others Vs. T.V.Chokkappa (AIR 1972 SC 2609), wherein it has been held as follows:
"That section lays down that no Magistrate shall take cognizance of an offence falling inter alia under Ch.XXI of the Penal Code (that is, Ss.499 to 508)except upon a complaint made by some persons aggrieved of such offence. Section 198, thus, lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal."

13. In view of the above said findings of the Apex Court, the counsel at the risk of repetition further contended that the person defamed alone can file a complaint. In support of this contention, the learned counsel for the petitioner would further rely on the decision of Delhi High Court reported in Ganesh Nand Chela Vs. Swami Divyanand (1 980 Crl. L.J. 1036), wherein defamatory article was published in relation to a spritual head of an ashram. A complaint was filed by one of the disciples and it was held that the complainant does not come under the category of person aggrieved, as he is only one of the disciples. It was also held that the complainant has not been able to prove that the imputations are against him personally, or that he is the person aimed at. It is from this language, the learned counsel wants me to infer that the person aggrieved finding a place in Section 199 Cr.P.C, should be the person actually defamed and none else.

14. The next decision cited by the learned counsel is the

judgment reported in Prempal Singh and others Vs. Phool Singh and another (1980 Crl L.J.NOC 160(RAJ.), wherein spurious photographs of a mission was published depicting a false scene and consequently, they have held that a senior active member of the Mission, cannot be said to be a person aggrieved.

15. Likewise, another decision of the Calcutta High Court was cited by the learned counsel in support of his contention, which was reported in Dhirendra Nath Sen and another Vs. Rajat Kanti Bhadra (AIR 1972 CAL. 216), wherein the spritual head of certain community was published and individual of that community is not an aggrieved person within the meaning of Section 199 Cr.P.C.

16. On going through the decisions cited above, I find that in all these judgments the crux of the contention was whether in the given circumstances, relating to the facts involved in those particular cases, the complainant was an aggrieved person or not. However, in my opinion, those decisions do not discuss in detail, the term some person aggrieved. In my opinion, a reading of Section 199(1) Cr.P.C, which indicates that the complaint has to be filed by "some person aggrieved by the offence", cannot be given a restricted meaning, so as to mean that the complaint has to be made by the person who has been defamed "alone". The term "made by some person aggrie ved by the offence", is totally different from saying the complaint made by the person aggrieved by the offence. If it had been the intention of the framers of law that the person defamed alone can file a complaint, then the language in Section 199 would appear to be "except upon a complaint made by `the person' aggrieved by the offence" and not upon a "complaint made by `some' person aggrieved by the offence." The words "some person" appearing in the section instead of "The person" would make all the difference.

17. During the course of the arguments, the learned counsel while discussing about this phraseology, has relied on the decision of the Supreme Court reported in G.Narasimhan and others Vs. T.V.Chokkappa (19 72 SCC (Cri). 777 = (AIR 1972 SC 2609), wherein the term aggrieved person was discussed. It relates to a complaint filed by an office bearer of Dravidar Kazhagam (a political party) against the Publisher and Editor of a newspaper, who had published the resolutions passed in a conference arranged by the said Dravidar Kazhagam, which according to the complainant therein were defamatory in nature and has been made solely with the purpose of defaming the persons belonging to Dravidar Kazhagam. It may not be necessary for us to go into the facts of that case. But however, the said decision has been relied on by the counsel for the petitioner, solely to show that when the article published relates to a defamatory matter, against the members attending the conference, it does not amount to a determinate body and as such in view of Section 499(2), when an indeterminate body had been defamed, an individual however responsible position or post he may be holding in the said party, cannot file a complaint. It is while considering whether it is a determinate body or not, their Lordships of the Supreme Court have held that since it is not known as to who attended the conference and consequently it was a

determinate body, no individual can file a complaint. At the same time, they have also held that the case would have been different, if Dravidar Kazhagam has been defamed. Therefore, in my view this decision does not actually help the petitioner in any manner.

18. Per contra, the learned counsel for the respondent would argue that the term some person aggrieved would really indicate that any person who is intrinsically connected with the defamed person can also file a complaint and it is not necessary that the person who has been defamed alone has to file a complaint. In support of this contention, the learned counsel would first cite a judgment of Division Bench of Calcutta High Court, reported in Mrs.Pat Sharpe Vs. Dwijendra Nath Bose (1964 (1) Cri.L.J. 367), wherein their lordships have held that it cannot be laid down as inflexible rule that the expression "some person aggrieved" in Section 198 of Criminal Proceedure Code, will only be limited to the person actually defamed or affected. The section does not say that complaint can only be made by the person defamed. What it requires is that the complaint must be made by `some person aggrieved'. The expression "some person aggrieved" was not intended to be restricted to the person actually defamed. It must be determined in each case according to its own circumstances whether the complainant could be said to be in a legal sense a person `aggrieved'.
In this context, it is worthy to note that the meaning of the word `aggrieved' given in Websters International Dictionary is `Troubled or Distressed, having a grievance; adversely affected in respect of legal rights; suffers from an infringement or denial of legal rights.
Therefore, the word aggrieved would be having different meanings at different connotations. It all depends upon facts and circumstances of each case.

19. The learned counsel for the respondent also relied upon the decision of the Madras High Court reported in Samithurai Thevar.K and others Vs. T.E.S.Batcha 1970 LW Crl 7), wherein His Lordship K.N. Mudaliar has followed the decision reported in Mrs.Pat Sharpe Vs. Dwijendra Nath Bose (1964 (1) Cri.L.J. 367 and has held that it must be determined in each case to its own circumstances, whether the complainant could be said to be in a legal sense a person "Aggrieved". However, in the latest decision of the Supreme Court reported in John Thomas Vs. Dr.K.Jagadeesan (2001 SCC (Cri) 974), the term some person aggrieved by the offence has been dealt with in extenso and their Lordships have held that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case.
This decision in my opinion would clinchingly settle the issue beyond all doubt that as to whether the complainant was or was not aggrieved by the publication is a matter of evidence.

20. In the facts and circumstances of the case, it is seen that the complaint itself discloses that the complainant was an elected MLA in 1980 and 1991 and was also a Minister for Commercial Taxes during 1 993

and he is the Head Quarters Secretary of AIADMK and also the District Secretary of the party at Ramanathapuram District and this party having been recognised as a political party by the Election Commission of India, of which the defamed person Jayalalitha is the General Secretary. According to his further averments in the complaint, the defamed article had been published against Jayalalitha, as well as her party members and consequently, he is an aggrieved person. The matter is at the threshhold and evidence had not been let in. It is still open for the complainant to establish in Court as to how he is aggrieved and it is open for the accused as well to show that the complainant does not come under the category of some person aggrieved. Therefore, in the circumstances of the case, I feel that the article which apparently on the face of it, appears to be a defamatory one, it is just and proper that the matter has to be decided only during the course of trial.

21. The next contention which has been raised is that in the same publication along with the said Jayalalitha being defamed, it has been alleged that Jayalalitha with the connivance of her party men have conducted the atrocities. The objection raised by the counsel is that Jayalilatha and her party men is an indeterminate body and hence no individual can prosecute the publisher for the said article.

22. In support of the above said argument, the learned counsel relied on the decision reported in G.Narasimhan and others Vs. T.V. Chokkappa (1972 SCC (Cri). 777 = (AIR 1972 SC 2609), which had been referred by me earlier and it has been categorically held in the said case that if a defamatory article has been published in relation to the party as such, the concerned secretary or the office bearer can file a complaint.
But in that particular case, defamatory article was published only against the persons attending the conference and hence Supreme Court had stated that the complaint was not maintainable. However, the observations in the said decision though relied on by the counsel for the petitioner, is actually against him.

23. Likewise, the learned counsel for the petitioner has also relied on the decision of the Supreme Court decision reported in Sahib Singh Vs. State of Uttar Pradesh (AIR 1965 SC 1451), wherein their Lordships have said that while discussing Explanation No.2 of Section 499, which covers a person including a collection of persons, they hold that the collection of persons must be identifiable in the sense that one could with certainly say that this group of particular people has been defamed as distinguished from the rest of the community and further it has also been held that it is a matter of evidence.
As against this if the argument of the learned counsel has to be accepted that he can write anything against a party and publish the same in the magazine and then claim immunity by saying nobody is competent to prosecute and he can go scot free, it would lead to a mockery of justice.

24. In the light of the earlier decision reported in

G.Narasimhan and others Vs. T.V.Chokkappa (AIR 1972 SC 2609), AIADMK party as such if it has been defamed the Secretary can file a complaint and in the present case prima facie, it appears that when an article has been published stating Jayalalitha and her party men, it means the members of the AIADMK party have committed the offence and it prima facie appears that that the party as such is an identifiable party and they are at liberty to file a complaint. However, I feel that this again is a matter to be decided only during the course of trial. It is open for the accused to establish that it is not an identifiable party and consequently, the complainant has no right file a complaint.

25. With the above said observations, the revision is dismissed. Consequently, connected Crl.M.P is closed.

26-02-2002

Index:Yes/No
csh

To

1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

2.-Do- Thro' the Chief Metropolitan
Magistrate, Egmore, Chennai.

A.PACKIARAJ,J.
Pre-Delivery Order in
Crl.R.C.No.840 of 1998

26-02-2002